

**DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL ERVIN FULLER,

Defendant.

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Case No. 3:20-cr-0018

ORDER

BEFORE THE COURT is the trial in this matter, currently scheduled for September 14, 2020. For the reasons stated herein, the time to try this case is extended up to and including November 2, 2020.

On March 17, 2020, the Chief Judge of the District Court of the Virgin Islands entered a general order responding to the COVID-19 pandemic. The Chief Judge noted that the pandemic had been declared a national emergency and a public health emergency by the President of the United States. The Chief Judge also noted that the Governor of the Virgin Islands had declared a state of emergency. The Chief Judge found it necessary to “take reasonable and prudent actions” “in order to further public health and safety, and the health and safety of Court personnel, counsel, litigants, other case participants, jurors, persons with other business at the courthouse, and the general public.” *Mar. 17, 2020, Order Concerning Operations of the District Court of the Virgin Islands During the COVID-19 Outbreak* at 1-2 (*Mar. 17, 2020*), <https://www.vid.uscourts.gov/sites/vid/files/general-ordes/CoronaVirusOperationsOrder.pdf>.

Among other precautionary measures, the Chief Judge continued all criminal trials scheduled from March 18, 2020, through April 16, 2020. The Chief Judge found that the ends of justice required excluding March 18, 2020, through April 16, 2020, from the Speedy Trial count in all criminal matters.

Such exclusion is necessary as to any cases scheduled for trial during the March 18, 2020 through April 16, 2020 period in order to assure that

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there is a full, unhindered, continuously serving jury venire and seated jury in every case, which is central to the sound administration of justice. Such exclusion of time is also necessary in cases that are set for trial outside of the March 18, 2020[,] through April 16, 2020[,] time period, as well as cases that are not yet set for trial, in order to address the reasonably anticipated difficulties in defense counsel communicating or visiting with clients; the difficulties that the parties are likely to face in undertaking all of the tasks necessary to fully prepare for trial; and the inherent delay in the scheduling of further trials as a consequence of the exclusion period herein.

Id. at 2-3. The Chief Judge has since extended the general order several times, excluding March 18, 2020, through September 30, 2020, from the Speedy Trial count in all criminal matters.

Since the Chief Judge entered the general order, the crisis in the U.S. Virgin Islands and the United States in general has intensified. On March 17, 2020, there were approximately 7,000 confirmed cases in the United States, two of which were in the U.S. Virgin Islands. As of the date of this Order, there are over 6,030,000 confirmed cases in the United States, 1139 of which are in the U.S. Virgin Islands. The virus has claimed over 183,000 lives in the United States and 15 in the U.S. Virgin Islands. The number of cases and deaths continues to rise rapidly.

Recognizing the gravity of the situation, Congress passed an unprecedented financial assistance package, the CARES Act, on March 27, 2020. The Act was signed into law by the President of the United States that same day. Among its many provisions, the CARES Act authorizes district courts to use teleconferencing to hold felony plea hearings and felony sentencing hearings under appropriate circumstances. *See* CARES Act, Pub. L. No. 116-136, § 15002(b)(2) (2020).

Moreover, recognizing the severity of the public health crisis presented by COVID-19, Virgin Islands Governor Albert Bryan declared a state of emergency for the Virgin Islands in March 2020. In a series of executive orders in March and April of 2020, Governor Bryan instituted a number of precautionary and preventative measures that significantly curtailed economic and local governmental operations. Over the next several months, the rate of new positive COVID-19 cases in the Virgin Islands decreased significantly. As a result, Governor Bryan loosened the previously ordered restrictions. However, beginning in July, the Virgin

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Islands began to see a dramatic uptick in new positive COVID-19 cases, a trend that continues to this date. On August 13, 2020, Governor Bryan issued an executive order effecting a return to all the previously imposed restrictions on economic and local governmental operations along with additional restrictions. Among other measures, Governor Bryan has ordered all nonessential businesses to close, all nonessential public workers to stay home, all establishments—with the exception of grocery and ‘big-box’ stores—to limit occupancy to no more than ten people, and all schools and churches to close. Some of these heightened restrictions will remain in place for at least 30 days.¹ Governor Bryan has emphasized that these measures are necessary to curtail the rapidly increasing spread of COVID-19 in the Virgin Islands.

While the Speedy Trial Act requires that defendants be tried within seventy days of indictment, the Court specifically finds that further extending this period would be in the best interest of justice. In order to avoid overwhelming our healthcare system, it is essential that action be taken to slow the spread of the virus. Social distancing--specifically avoiding gatherings of more than 10 people and maintaining a distance of at least 6 feet from others--is the most effective check against the COVID-19’s transmission. Given the increasingly dire circumstances faced by the U.S. Virgin Islands and the United States as a whole, the Court finds that a greater extension of time is necessary for the protection and well-being of the defendant, the jury, the prosecutors, the witnesses, the Court’s personnel, and the general public at large.

The premises considered, it is hereby

ORDERED that the time beginning from the date of this order granting an extension through November 2, 2020, shall be excluded in computing the time within which the trial in this matter must be initiated pursuant to 18 U.S.C. § 3161; and it is further

¹ Several of these heightened restrictions were due to expire on August 31, 2020. On August 28, 2020, Governor Bryan issued an executive order further extending those restrictions to September 8, 2020.

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ORDERED that the trial in this matter previously scheduled for September 14, 2020, is **RESCHEDULED** to commence promptly at 9:00 A.M. on November 2, 2020, in St. Thomas Courtroom 1 before District Judge Robert A. Molloy.

Dated: September 2, 2020

/s/ Robert A. Molloy
ROBERT A. MOLLOY
District Judge